LEGALITY OF LIVE-IN RELATIONSHIPS IN INDIA: A CRITICAL ANAYLSIS

SYNOPSIS OF THE THESIS

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Submitted by

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INTRODUCTION

Live-in relation i.e. cohabitation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and or sexually intimate relationship. The term is most frequently applied to couples who are not married.

The attitude towards live-in relationships in different societies is diverse but its meaning is the same almost everywhere. It is a kind of relationship in which a couple lives together without marrying each other and without any legal or social commitment. This arrangement is similar to marriage when it comes to the relationship between two individuals living together but there are no rights and obligations on either of the partners.

With increasing trend of living together without marriage, governments and social organizations have been working together to formulate laws to safeguard the interest of both the partners. Today there are quite a few laws guiding these relationships but these laws do not provide rights similar to marriage. The Hindu Marriage Act, 1955 does not recognize 'live-in-relationship', nor does the Criminal Procedure Code 1973. The Protection of Women from Domestic Violence Act 2005 on the other hand for the purpose of providing protection and maintenance to the female live-in partner provides space for granting alimony under the Act.

The Supreme Court of India has noted that just any 'live-in relationship' does not entitle a woman to alimony. To make a 'live-in' legal the Supreme Court says that the couple must hold themselves out to society as being akin to spouses; they must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried; and they must have voluntarily cohabited for a significant period of time.

The definition of live in relationships is not clear and so is the status of the couples in a live in relationship. There is no specific law on the subject of live in relationships in India. There is no

legislation to define the rights and obligations of the parties to a live in relationships, the status of children born to such couples. In the absence of any law to define the status of live in relationships, the Courts have come forward to give clarity to the concept of live in relationships. The Courts have taken the view in *D. Velusamy vs. D. Patchaiammal* (2010) 10 SCC 469 that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary.The earliest case in which the Supreme Court of India recognized the live in relationship as a valid marriage was that of *Badri Prasad vs. Deputy Director of Consolidation& Ors* AIR (1978) SC 1557, in which the Court gave legal validity to the a 50 year live in relationship of a couple. In *Payal Katara vs. Superintendent Nari Niketan Kandri Vihar Agra and Others* (2001) AIR (ALL) 254 the Allahabad High Court ruled out that "a lady of about 21 years of age being a major, has right to go anywhere and that anyone –man and woman even without getting married can live together if they wish.The concept of live in relationship was again recognized in the case of *Tulsa v. Durghatiya* (2008) 4SCC 520.

In the case of *S. Khushboo vs. Kanniammal & Anr.* (2010) 5 SCC 600, the Supreme Court held that living together is a right to life. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not "illegal" in the eyes of law. The Court held that how can it be illegal if two adults live together, in their words "living together cannot be illegal."In the recent case of *Indira Sarma vs. V.K.V. Sarma* Criminal Appeal No. 2009 of 2013 (CRL) No. 4895 of 2012- Decided on 26-11-2013, the Supreme Court has illustrated five categories where the concept of Live-In Relationship can be considered and proved in the court of law which firstly comprises of those relationships between an adult male and an adult female both unmarried, secondlya married man and an adult unmarried woman entered knowingly, thirdly an

adult unmarried man and a married woman entered knowingly,fourthly an adult unmarried female and a married male entered knowingly and fifthly a relation between same sex partners (gay or lesbians), these guidelines provided by the court are of far reaching importance however it may lead to certain problematic situations. In a most recent case of *Anil Dutt Sharma vs. Union of India,* 2015 SCC Online Delhi 7615, decided on 18-02-2015, Delhi High Court refused to keep live-in relationships outside the purview of rape under the Indian Penal Code, 1860 saying it would amount to giving them the status of matrimony, which the legislature has chosen "not to do" as live-in-relationship constitutes a distinct class from marriage.

Rights of Female and Child born out of Live-In Relationship:

In June, 2008, it was recommended by the National Commission for Women to the Ministry of Women and Child Development to include live in female partners for the right of maintenance under Section 125 of Criminal Procedure Code, 1973. The view was also supported by the judgment in *Abhijit Bhikaseth Auti v. State of Maharashtra and Others* (2009) Cri LJ 889 9. In October, 2008, the Maharashtra Government also supported the concept of live in relationships by accepting the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife. However, recently it was observed that it is divorced wife who is treated as a wife in context of Section 125 ofCriminal Procedure Code, 1973 and if person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance under Section 125 of Criminal Procedure Code.

The partner of a live in relationship was first time accorded protection by the Protection of Women from Domestic Violence Act, 2005, which considers females who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage,

also akin to wife, though not equivalent to wife. Section 2 (f) of the Act defines domestic relationship which means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Thus, the definition of domestic relationship includes not only the relationship of marriage but also a relationship 'in the nature of marriage'.

Since there is no specific law that recognizes the status of the couples in live in relationship, hence the law as to the status of children born to couples in live in relationship is also not very clear.The Hindu marriage Act, 1955 gives grants the status of legitimacy to every child irrespective of his birth out of a void, voidable or a legal marriage. But there is no specific law that raises any presumption of legitimacy in favor of children of live in partners. The future of children of live in partners becomes very insecure in case the partners step out of their relationship. There comes the requirement of a strong provision to safeguard the rights of such children. There must be provision to secure the future of the child and also entitling the children to a share in the property of both the parents.

Again in the absence of a specific legislation, the Supreme Court of India took the initiative to safeguard the interest of children of live in couples. In the case of *Bharatha Matha & Ors. vs. R. Vijaya Renganathan & Ors*, AIR 2010 SCC 2685, the Supreme Court of India has held that child born out of a live-in relationship may be allowed to succeed inheritance in the property of the parents, if any, but doesn't have any claim as against Hindu ancestral coparcenary property.

Thus the legal status of live-in relationships in India has been evolved and determined by the Supreme Court in its various Judgments. However, there is no separate legislation which lays down the provision of live in relationships and provides legality to this concept. Though the

concept of live in relationship is considered immoral in some corners of the society, but is definitely not illegal in the eyes of law. The Supreme Court states that living together is a right to life and therefore it cannot be held illegal. The court has also tried to improve the conditions of the women and children borne out of live in relationships by defining their status under the domestic violence Act, 2005 if the relationship is proved to be 'relationship in the nature of marriage'. But at present there is a need to formulate a law that would clarify the concept. There should be clear provisions with regard to the time span required to give status to the relationship, registration and rights of parties and children born out of it. The utmost need of the hour is to secure the future of the children born to live in couples. The steps taken by the judiciary are indeed welcoming and pragmatic in approach. Though the live in relations provide the individuals their individual freedom but due to the insecurity it carries it with, there needs to be a law to curtail its disadvantages.

LITERATURE SURVEY

- Shaikh (2012) through her article "Need of Special Legislation on Live-In Relationship" has described concept of Live-In Relationship, causes of its emergence and its status in India. The author through her article has expressed an urgent need of a legislation regulating this type of living arrangement keeping in view the ever increasing demand of this type of cohabitation in the continuously modernizing Indian society.
- Bag (2012) in this article "Succession Rights in Case of Live-In Relationships: An Analysis in the Indian Context" has critically examined the judicial pronouncements given by Indian Courts upon Live in Relationship. The author through this article also tries to identify the

need of a proper legal framework for securing the succession rights of live-in partners in India, especially in case of intestate succession.

- Hittanagi(2012) through this article "Live-in- Relationship and Indian Judiciary" has discussed the role of Indian Judiciary in regulating the concept of Live-In Relationship in India by providing various guidelines. Also the author has critically examined the guidelines given by the Indian Courts and has discussed certain grey areas flowing out as a result of it.
- Patil, (2011) in "Socio-Legal Perspective of Live-in Relationship in India" has provided with the detailed discussion about the impact of live-in-relationship in the society which mainly involves breaking down of the marriage, legitimacy of the child born out of live-in-relationships, impact upon marriage etc.
- Satish, (2014) in his article "Living in Relationship - An Indian Perspective" has described position of Live-in Relationship in India in contrast with International perspective of Live-in Relationship.
- Aggarwal (2013) through his article "Live-In Relationships: Have they made marriage redundant" has discussed the impact of Live-In Relationship upon the institution of marriage in the Indian society. The author also provides with the strength and weaknesses of Live-In Relationship covering all its pros and cons.

OBJECTIVES

The research is being conducted to achieve the following objectives:

. To study and analyze law relating to Live-in Relationships with regard to Indian scenario.

. To critically examine judicial approach on Live-In Relationship in India.

3. To comparatively analyze socio-legal aspects of Live-In Relationships in United States of America, United Kingdom and Australia.
4. To identify the need of a proper legislationwhich could provide protection to both the Live-In partners and can also deal with issues relating to Live-In Relationship to an appropriate extent in India.

METHODOLOGY

The researcher will primarily be following a doctrinal method of research. In India the law on this concept is at nascent stage, thus the primary source includes various judicial pronouncements given by the courts in India. The researcher would also adopt approach of descriptive and critical analysis. Researcher seeks to site traditional legal research method including detailed library and other data base researching.The various resource materials and relevant articles provide ample opportunity and sufficient help to produce in-depth study in this topic. Beside this various databases like SCC Online, Westlaw, Lexis Nexis etc. are the other important online source of the proposed thesis.

LIMITATIONS OF THE STUDY

The research shall lack with practical and actual problems confronted by Live-In couples and Children born out of such relationships. Hence by and large researcher shall rely on secondary sources majorly on precedents and commission reports.

TENTATIVE CHAPTERIZATION

Chapter 1 : Introduction

Meaning of Live-In Relationship

Reasons for Live-In-Relationship

Chapter 2 : Legal Status of Parties in Live-In Relationship

Rights of Partners in Live-In relationship

Rights of Child born out of Live-In relationship

Chapter 3 : Law relating to Live-In relationships in United States of America, United Kingdom and Australia

Chapter 4 : Live-In Relationships in India: A Socio-Legal Analysis

Social Perspective

Judicial Perspective

Chapter 5 : Conclusion and Suggestions

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